

United States District Court
District of Massachusetts
Central Division

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U.S. DISTRICT COURT
DISTRICT OF MASS.

TRIF Company
Plaintiff

V.

C.A. No. 04-30194-MAP

Chris Morris d/b/a International Housewares,

Frank Stoegarar d/b/a Worldwide Marketing,

Zia Biao Xu and Zhi Xiong Xu d/b/a World

Link, LLC

First Amended Complaint

1. Plaintiff TRIF Company is a Texas Corporation with offices located in the State of Rhode Island.
2. Defendant Chris Morris, upon information and belief, is a specialty retail vendor d/b/a International Housewares with an office at 6601 Ventor Ave., Suite 305, Ventor, NJ 08406.
3. Defendant Frank Stoegarar d/b/a Worldwide Marketing has an office at 859 Mullen Ave., Los Angeles, CA 90005.
4. Defendants Zia Biao Xu and Zhi Xiong Xu d/b/a World Link, LLC maintain an office at 178 Hester Street, New York, New York 10013.
5. Upon information and belief, Defendants have worked together to manufacture, import and distribute a pillow product based on the Plaintiff's product and trade dress.

Jurisdiction

6. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 (Federal Question) and 28 U.S.C. § 1338 (Copyrights, patents and trademarks).
7. Defendants are currently doing business in the Commonwealth of Massachusetts and have established the requisite minimum contacts to invoke the jurisdiction of this Court.

Background

8. For the past fifteen years, David Harmon, President of TRIF Company, has been fully engaged in specialty retail selling at temporary locations.
9. The specialty retail industry involves the development and marketing of specialty items at venues such as state fairs like the Big Exposition in Springfield, Massachusetts. See Exhibit 1. (The Summer 2004 Specialty Retail Magazine).
10. Approximately one year ago David Harmon established TRIF Company, a Texas corporation with offices in Rhode Island, to promote a line of therapeutic pillows.
11. TRIF Company conducted extensive research into these pillows including analysis by medical professionals. See Exhibit 2 (Medical Endorsement).
12. TRIF Company developed manufacturing specifications for the pillows which include water resistant covering material of a nylon/spandex blend that is machine washable and dryable, premium medical grade micro-beads from Holland, tape reinforced seams, double locked stitched seams, double sewn closures, and hypo-allergenic and FDA approved materials.
13. TRIF Company invested hundreds of thousands of dollars in the development, advertising, manufacturing, importing and distribution of this product line over the past year. See Exhibit 3. (Examples of Advertising)
14. TRIF Company had special packaging designed for the pillows by Doug Wolley of Cranston, Rhode Island, who created a largely transparent bag for the pillows with distinctive lettering and logos. One version of the bag includes the slogans "SNOOZTIME on the Beach" and "The Next Best Thing!"
15. Another version of the bag designed by Wolley for TRIF Corporation says "SNOOZTIME" and "A Relaxing Experience".
16. The pillows are marketed under the trademark name SNOOZTIME.
17. The SNOOZTIME pillows are sold in ten to twelve colors including some fluorescent colors and wholesale at a price of \$6.50 to \$8.00 each.
18. The pillows are sold in state fairs across the country including the current Big Exposition in Springfield, Massachusetts, which runs from September 15 to October 3, 2004.

- 1 19. The SNOOZTIME therapeutic pillows were introduced to the market on July 4, 2004 at the
2 Delmar California Fair at a rental cost of \$ 12,500 plus related expense.
- 3 20. TRIF Company sells the product to individuals on a retail basis as well as bulk purchase
4 customers who typically operate specialty kiosks in malls.
- 5 21. TRIF Company also markets the pillows to department stores and chain stores.
- 6 22. Earlier this year, Frank Stoegarar of Worldwide Marketing, tried to buy TRIF Company's
7 inventory of therapeutic pillows for his specialty retail firm, but Plaintiff refused to sell.
- 8 23. At or near the time of the debut of the SNOOZTIME therapeutic pillow line, Frank Stoegarar
9 and/or Zia Biao Xu or their agent(s) acquired one or more SNOOZTIME pillows.
- 10 24. At the Big Exposition in Springfield, Massachusetts on September 21 of this year, Plaintiff
11 learned that Frank Stoegarar in conjunction with Zia Biao Xu and Chris Morris of International
12 Housewares were selling a copy of the SNOOZTIME therapeutic pillow at a price of \$3.40 to
13 \$6.50 each.
- 14 25. Plaintiff acquired one of Morris's pillows and upon examination immediately detected a strong
15 odor of petroleum, a lighter covering material that easily runs and pulls, industrial grade beads
16 with a distinctive odor from China, fewer large beads with irregular surfaces than the
17 SNOOZTIME product, no seam reinforcement, inferior seam stitching, a counterfeit label and
18 most importantly and offensively, virtually identical packaging.
- 19 26. The Morris package reads "ZZZ's Time on the Couch" and "The Next Best Stuff" in a largely
20 transparent bag with identical markings and lettering as the SNOOZTIME bag.
- 21 27. The drawstring, artwork, coloring, and logo style are identical.
- 22 28. The introduction of this product line at the Big Exposition, where TRIF Company has invested a
23 significant sum to market its therapeutic SNOOZTIME pillows, has confused SNOOZTIME's
24 customers.
- 25 29. During the first two days of the Big Exposition, 75% of TRIF Company's sales were
26 SNOOZTIME's therapeutic pillows.
- 27 30. That figure decreased to 40% of sales as of September 22, after Morris began selling the copycat
28 pillows in packaging virtually identical to SNOOZTIME.
- 29 31. Upon information and belief, Morris and his associates have criticized the SNOOZTIME pillow
30 line, alleging erroneously that the products are not washable.

- 1 32. Upon information and belief, Morris and his associates are grossing more than \$1,200 a day
2 selling their infringing pillow products and that the Morris group has purchased 5,000 pillows for
3 sale in this country.
- 4 33. Plaintiff has lost retail and bulk sales to the Morris group based on reduced sales as well as
5 information I have gathered from the field.
- 6 34. Plaintiff's projected gross sales at the Big Exposition was \$70,000-\$80,000 prior to the
7 introduction of the knock-off products by the Morris group.
- 8 35. Plaintiff has also invested in more than 42 freight containers from China, each containing
9 approximately 7,000 pillows, as well as an additional 45 containers either in production or in
10 transit.
- 11 36. Plaintiff's rental costs for the Big Exposition is approximately \$4,000 not including
12 transportation, advertising, labor and marketing materials such as posters.
- 13 37. In addition to stealing customers from TRIF Company, the Morris group has harmed the
14 reputation of SNOOZTIME and TRIF Company for quality, has diluted the SNOOZTIME
15 trademark by confusing SNOOZTIME therapeutic pillows with inferior knock-off products and
16 has caused TRIF Company incalculable losses.

17
18
19 **Count I**

20 **Trade Dress Infringement**

- 21
- 22 38. Plaintiff re-alleges and incorporates paragraphs 1-37 as though fully set forth herein.
- 23 39. Plaintiff has developed a reputation in the specialty retail industry for the distinctive look, feel
24 and design of its pillow and pillow packaging.
- 25 40. Defendants have infringed on Plaintiff's trade dress in violation of the Lanham Act, 15 U.S.C. §
26 1125 et seq. by copying the look, feel and design of Plaintiff's pillow and pillow packaging.
- 27 41. Consumers and retail stores confused the Defendants' pillows and pillow packaging with the
28 Plaintiff's pillows and pillow packaging.
- 29 42. This confusion has caused substantial harm to Plaintiff in terms of lost sales, customers and
30 diminished reputation for quality and fair pricing.

1 Wherefore, Plaintiff demands treble damages plus interest, costs, and attorneys' fees incurred in this
2 action.

3
4 **Count II**

5 **Unfair Competition**

6 43. Plaintiff re-alleges and incorporates paragraphs 1-42 as though fully set forth herein.

7 44. Without the consent or approval of Plaintiff, Defendants wrongfully misappropriated, sold and
8 distributed unauthorized and confusingly similar pillows and pillow packaging

9 45. Defendants' confusingly similar pillow and pillow packaging are inferior to Plaintiff's product in
10 craftsmanship and design but are virtually the same product packaging which confuses consumers
11 who believe that such inferior product is that of the Plaintiffs

12 46. Stores selling Plaintiff's designs and consumers have been confused by the Defendants' products
13 believing that the Plaintiff's is the source of the illegal products.

14 47. As a direct and proximate result of the unauthorized copying, Plaintiff has suffered injury to its
15 reputation and a loss of income.

16
17 Wherefore, Plaintiff demands treble damages plus interest, costs, and attorneys' fees incurred in this
18 action.

19
20 **Count III**

21 **Tortious Interference with Prospective Contractual Opportunity**

22 48. Plaintiff re-alleges and incorporates 1-47 as though fully set forth herein.

23 49. Without the consent or approval of Plaintiff, Defendants wrongfully misappropriated, sold and
24 distributed unauthorized and confusingly similar pillows and pillow packaging.

25 50. Plaintiff and Defendants sell their products in similar markets at many of the same venues,
26 including but not limited to the Big Exposition in Springfield, Massachusetts.

27 51. By introducing their infringing product at the Big Exposition in September 2004, Defendants
28 intentionally confused Plaintiff's retail and bulk customers and caused Plaintiff to lose sales and
29 business opportunities.

30 52. This interference with prospective contractual relations has caused the Plaintiff to lose significant
sales and profits.

Wherefore, Plaintiff demands damages plus interest, costs, and attorneys' fees incurred in this action.

Count IV

Violation of MGL 93A

53. Plaintiff realleges and incorporates paragraphs 1-52 as though fully set forth herein .

54. Without the consent or approval of Plaintiff, Defendants wrongfully misappropriated, sold and distributed unauthorized and confusingly similar pillows and pillow packaging.

55. Without the consent or approval of Plaintiff, Defendant's wrongfully misappropriated, sold and distributed unauthorized and confusingly similar pillows and pillow packaging.

56. Defendant's sale of its infringing product and product packaging at the Big Exposition in September 2004 constitutes unfair and deceptive trade practice substantially and primarily occurring in the Commonwealth of Massachusetts.

57. Plaintiff has been injured by Defendants unfair and deceptive trade practices.

Wherefore, Plaintiff demands treble damages plus interest, cost, and attorneys' fees incurred in this action.

Count V

Declaratory Judgment

58. Plaintiff re-alleges and incorporates paragraphs 1-58 as though fully set forth herein.

59. Plaintiff's pillows are duly registered with the Commonwealth of Massachusetts; and

60. Upon information and belief, Defendants' pillows have a counterfeited or copied label containing erroneous information about the manufacturer and importation of the product as well as necessary government approvals.

61. Plaintiff's labeling complies with all applicable laws.

Wherefore, Plaintiff requests a declaration judgment holding the Defendants' infringing pillows do not meet legal requirements for such products and are labeled with misleading and erroneous information.

Prayer for Relief

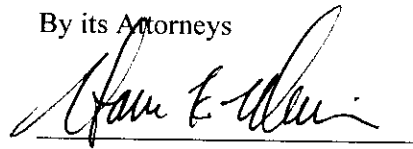
Wherefore Plaintiff request that this Court order Defendants to

- A. Cease and desist from making, selling and distributing confusingly similar pillow and pillow packaging;
- B. Have all Defendants' confusingly similar pillows and pillow packaging immediately seized from the Big Exposition in Springfield Massachusetts;
- C. Notify all people that purchased these items ordering an immediate recall at Defendants' expense;
- D. Deliver to Plaintiff all of Defendants' infringing packaging for destruction;
- E. Pay Plaintiff compensation in the amount of \$ 500, 000 or an amount which the court deems just;
- F. Pay Plaintiff a total of \$1,000,000 or an amount the Court deems just for punitive damages;
- G. Pay Plaintiff's attorneys' fees and costs, and further
- H. To find that Defendants have mislabeled their products in violation of law.

Respectfully submitted by,

Plaintiff,


By its Attorneys



Harris K. Weiner, Esq. # 551981
Law Office of Jeffrey B. Pine
321 South Main Street
Suite 302
Providence, RI 02903
Phone: (401) 351-8200
Fax: (401) 351-9032

CERTIFICATION

I, Leslie Odom, hereby certify that a true copy of the above-entitled *First Amended Complaint* was mailed, postage pre-paid, to Chris Morris, d/b/a International Housewares, 6601 Vantor Ave., Suite 305, Vantor, N.J. 08406 on this 15 day of December 2004


Leslie Odom

retail

THE WEEKLY JOURNAL FOR
RETAIL ENTREPRENEURS

The Cool Guys of HotHeadz

Bruce Singer and
Jay Oxenhorn

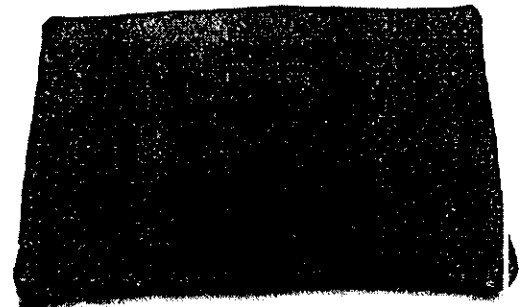
HotHeadz is a leading provider of
personalized products and services
for the retail industry. The company
has a long history of providing
high-quality products and services
to its customers. The company's
products and services are designed
to meet the needs of the retail
industry. The company's products
and services are designed to meet
the needs of the retail industry.



NEW **SNOOZTIME™ DREAMER** PILLOW ENDORSED BY LEADING CHIROPRACTOR

"The new **DREAMER™ PILLOW** has many distinct advantages over regular foam pillows." — Dr. James Baggio, D.C.

1. First of all, they are very comfortable!
2. If you are a side sleeper, the pillow will mold to your shoulder height allowing you to keep your neck in line with your spine vs. being bent or crooked.
3. If you are a back sleeper, the pillow nicely fills the gap between your neck and the bed and keeps the proper curvature in your neck (arched slightly forward, towards your throat).
4. Many of the cervical pillows on the market will lose their support and need to be replaced, often within a years time. Snooztime™ pillows should maintain their supportive qualities indefinitely, due to the flexible qualities of the filling.
5. The entire pillow can easily be machine washed, as opposed to just the pillow case.
6. People who are unable to enjoy the supportive qualities of a down pillow due to allergies can now enjoy the same supportive qualities of down in a Snooztime pillow without the discomfort of allergies.
7. They feel really cool and comfortable!!!



James Baggio D.C.

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Just a Better Pillow

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New Product!

GREAT FOR:
Travel
Lounging
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FUN!



Your customers will
touch it, love it, buy it!

- ◆ Universally loved by all
- ◆ Proven high volume sales
- ◆ Full line of sizes, shapes and colors
- ◆ High Quality
- ◆ Machine washable
- ◆ Complete turnkey concept—everything needed to start
- ◆ Low start up cost—includes enough product to triple your investment
- ◆ Retail price points \$14.95 to \$44.95



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The World's Best Pillow is

Squishy

Snuggly

Visit
heatw



PRODUCT CARE

Your Snooztime pillow will provide years of comfort with only minimal maintenance and cleaning. The pillow shell is a blend of super stretch Nylon and Spandex, and the filling is 100% polystyrene foam beads.

Washing Instructions:

The Snooztime pillow can be hand washed in warm water using a mild detergent and then air dried. Using an oxygen bleach or enzyme pre-wash can help remove stubborn stains.
DO NOT USE CHLORINE BLEACH.

The Snooztime pillow can also be machine washed on a Gentle cycle using warm water, mild detergent and oxygen bleach, and then dried in the dryer using the Fluff setting.
DO NOT USE CHLORINE BLEACH.



Please Print:

Name: _____

Address: _____

Email: _____

Where Purchased: _____

Date Purchased: _____

Warranty

Snooztime™ warrants to the original purchaser that our pillows will be free from defects in materials and workmanship for a period of 90 days from the date of the original sales receipt. If during the warranty period our pillows are found to have defects in materials or workmanship they will be replaced without charge. Except as set forth above, Snooztime makes no other warranties, either express or implied, including the implied warranties of merchantability or fitness for a particular purpose. In no event will Snooztime, its employees or officers, or employees and officers of the parent corporation be liable for incidental or consequential damages of any kind, whether such damages are claimed on account of breach or warranty, breach of contract, or strict product liability, including without limitations, damage to property or other economic losses. This limited warranty gives you specific legal rights and you may also have other rights, which vary from state to state.



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NO POSTAGE
NECESSARY
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IN THE
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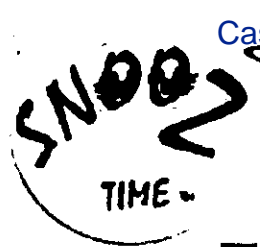
BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 169 CANTON TX

POSTAGE WILL BE PAID BY ADDRESSEE

CUSTOMER SERVICE
TEXAS RHODE ISLAND FORWARDING
231 VZCR 4104
CANTON TX 75103-9987





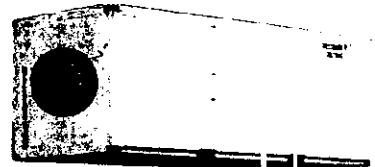
ATTENTION: PUSHCARTS AND KIOSKS



The World's Best Pillow Is Your Next
Hottest New Product!



**NOW... BUY BY THE
CONTAINER LOAD!**



PLAN #1 BUY A 20 FT. CONTAINER

PILLOW STYLE	QTY PER CONT.	PRICE EA.	YOUR COST	SELL PRICE	TTL SALES	PROFIT
ORIGINAL SNOOZ	1500	\$5.20	\$7800.00	\$19.95	\$29925.00	\$22125.00
U-SNOOZ NECK	350	5.50	1925.00	29.95	10482.50	8557.50
ANYWHERE SNOOZ	350	6.60	2310.00	34.95	12232.50	9922.50
SNOOZ DREAMER	150	9.10	1365.00	49.95	7492.50	6127.50
LUMBAR SNOOZ	150	7.60	1140.00	29.95	4492.50	3352.50
BODY SNOOZ	150	9.10	1365.00	44.95	6742.50	5377.50
TOTALS:	2650		\$15,905.00		\$71,367.50	\$55,462.50

TERMS: See all Terms below.

PLAN #2 BUY A 40 FT. CONTAINER

PILLOW STYLE	QTY PER CONT.	PRICE EA.	YOUR COST	SELL PRICE	TTL SALES	PROFIT
ORIGINAL SNOOZ	3500	\$5.20	\$18,200.00	\$19.95	\$69825.00	\$51625.00
U-SNOOZ NECK	800	5.50	4400.00	29.95	23960.00	19560.00
ANYWHERE SNOOZ	800	6.60	5280.00	34.95	27960.00	22680.00
SNOOZ DREAMER	300	9.10	2730.00	49.95	14985.00	12255.00
LUMBAR SNOOZ	300	7.60	2280.00	29.95	8985.00	6705.00
BODY SNOOZ	300	9.10	2730.00	44.95	13485.00	10755.00
TOTALS:	6000		\$35,620.00		\$159,200.00	\$123,580.00

TERMS: See all Terms below.

PLAN #3 ORDER W/ DEFERRED SHIPPING

SAME PLAN AS ABOVE EXCEPT YOU ARE PLACING YOUR ORDER NOW FOR GUARANTEED NOVEMBER DELIVERY, JUST IN TIME FOR HOLIDAY SELLING! THE ONLY DIFFERENCE IN COST TO YOU IS .75 CENTS PER UNIT INCREASE. THE SURCHARGE IS REQUIRED BECAUSE WE CARRY THE BALANCE UNTIL YOUR ORDER SHIPS. THIS PLAN WILL GIVE YOU THE SECURITY OF KNOWING YOU WILL HAVE AMPLE PRODUCT DURING THE PEAK HOLIDAY BUYING PERIOD, WITHOUT SCRAMBLING FOR PRODUCT AT THE LAST MINUTE. THE MOST VERSATILE PLAN!

THIS PLAN IS ONLY AVAILABLE UNTIL SEPTEMBER 15, 2004.

AFTER THAT, WE CANNOT GUARANTEE HOLIDAY DELIVERY!!!

PLAN #4 BUY DIRECT FROM OUR WAREHOUSE

PILLOW STYLE	QTY PER CASE	PRICE EA.	SELL PRICE
ORIGINAL SNOOZ		\$8.00	\$19.95
U-SNOOZ NECK		9.50	29.95
ANYWHERE SNOOZ		10.50	34.95
SNOOZ DREAMER		16.50	49.95
LUMBAR SNOOZ		9.50	29.95
BODY SNOOZ		15.50	44.95

Orders from this plan are shipped directly from our warehouses in Texas, Rhode Is and Los Angeles, Seattle, Toronto, or Vancouver. Please call for details.

TERMS

1. All goods F.O.B. China
2. 50% deposit upon order placement
3. Product usually ships 2-3 weeks from order placement.
4. Balance to be paid when container leaves China.
5. We can provide a Broker for buyer if needed
6. Buyer is responsible for Customs, Insurance, & Freight Charges.
7. Container will be delivered to your specified location.
8. Loss of deposit if balance is not paid when required.
9. TRIF Corp. not responsible for delays for any reason.



For Information Call:

BEWARE OF IMITATORS!

Snooz Time™ products are
only distributed by reps
from TRIF Co. Inc. in
the U.S. and Canada!

David Harmon or Kevin McIntyre
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distributed exclusively by
TRIF CORPORATION
1-800-336-0083
sales@texrif.com

TRIF Co. Inc. 231 VZ 4104 Canton Texas 75103

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- Therapeutic
- Relieves Tension
- Helps Posture
- Eases Fibromyalgia



great for

- cars,
- boats,
- trains,
- planes,
- beaches,
- stadiums!

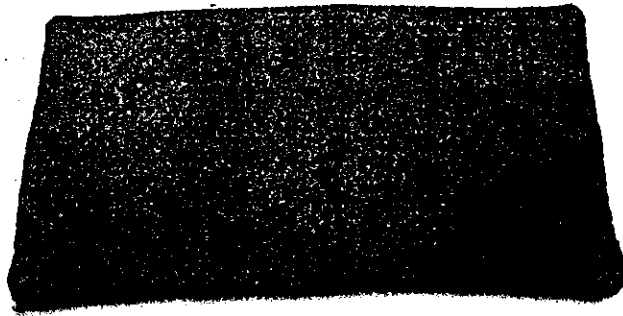
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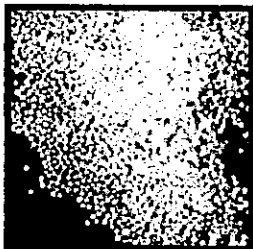
SNOOZTIME™ DREAMER™

THE DREAMER™

is a luxurious full-size bed pillow with the incredible comfort, support and easy care of our Snooztime™ personal and travel pillows. The fill of the Dreamer™ is made exclusively of ultra slippery "microbeads", providing uniform support to your head and neck throughout the night.



Unlike expensive "memory foam", our microbead fill moves when you move, continuously changing to meet your support needs. There are no zippers or hardware of any kind and the durable stretch cover won't bunch up or fold over, so no more "pillow marks" or "bed face" in the morning! Made of durable Cotton, Polyester and Microbeads, the Dreamer™ is naturally hypoallergenic and resists the growth of mold, mildew and bacteria. And the Dreamer™ is completely washable*.



Polystyrene microbead filling

How many pillows have you owned that you could easily and safely wash?
Check out these great features:

- Completely washable*
- Incredible comfort
- Uniform support
- 27" x 15" x 4"
- Hypoallergenic
- Durable
- Easy care
- Just 24.69 ounces

*see product care tag

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the "Ultimate Good Night's Rest"

SNOOZTIME
Just a Better Pillow

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